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Dated: March 29, 2004

Signature: *Gail L. Miller*

(Gail L. Miller)

Docket No.: 47583/P029US/10205730
(PATENT)

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4-1304

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Steven R. Boye et al.

Application No.: 08/827,634

Confirmation No.: 3941

Filed: April 9, 1997

Art Unit: 2176

For: METHOD AND APPARATUS FOR
IMPLEMENTING WEB PAGES HAVING
SMART TABLES

Examiner: W. L. Bashore

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APPELLANT'S REPLY BRIEF

M/S Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is presented in response to the Examiner's Answer mailed January 29, 2004. This Reply Brief is also in furtherance of the Notice of Appeal, filed August 25, 2003, and Appellant's Appeal Brief, filed October 27, 2004. This Reply Brief is transmitted in triplicate and accompanied by a Request for Oral Hearing.

Appellant respectfully requests withdrawal of the final rejection and allowance of the above-captioned application. Should the Appellee not find the comments contained herein persuasive, acknowledgment of receipt and entry of this Reply Brief is requested.

I. Introduction

Below Appellant addresses aspects of the Appellee's responses set forth in the Examiner's Answer dated January 29, 2004. Appellant hereby reiterates the arguments presented in Appellant's Appeal Brief filed August 25, 2003 by reference thereto. Although many of the Appeal Brief arguments are restated or rephrased below, in the interest of

brevity, the arguments from the Appeal Brief are not restated, whole-cloth, herein. Appellant submits the further arguments below with the intent of addressing the specific “Response[s] to Arguments” advanced in the Examiner’s Answer. The Appellee’s responses are addressed herein generally in the order in which they appear in the Examiner’s Answer.

II. Issues

A) Whether claims 1-5 and 8-19 are vague and indefinite under 35 U.S.C. 112, second paragraph;

B) Whether claims 1-5, 8 and 10-19 are unpatentable under 35 U.S.C. §103(a) over Templeman, U.S. Patent No. 5,845,303 (hereinafter *Templeman*) in view of Nielsen, U.S. Patent No. 5,897,644 (hereinafter *Nielsen*); and

C) Whether claim 9 is unpatentable under 35 U.S.C. §103(a) over *Templeman* in view of *Nielsen* and further in view of Lemay, Laura, Teach Yourself Web Publishing with HTML in a Week, Sams Publishing, 1995, pp. 306, 346, 348 (hereinafter *Lemay*).

III. The Rejection of Claims 1-5 and 8-19 Under 35 U.S.C. 112, second paragraph

As noted above, Appellant reiterates its arguments from the Appeal Brief in relation to the §112 rejection of claims 1-5 and 8-19. In response to Appellant’s Appeal Brief arguments, Appellee, in his Answer, states:

This phrase [susceptible to influence] does not serve to define the scope of the claimed limitations, because it is unclear if any action is to be taken. Something which is “susceptible to influence” is not a definitive phrase, and does not serve to define the claims so that the metes and bounds of claimed coverage is clear...Appellant argues ... that the Final Office Action’s response only reinforces Appellant’s position. It is respectfully noted that the examiner rejects the claims under 35 U.S.C. 103(a) based upon a possible interpretation of the phrase “susceptible to influence”, as a layout influenced by browser configuration.

Parsing claim 1, as an example of use of the phrase “susceptible to influence,” claim 1 in its preamble provides “A method for preserving a preferred presentation layout of a web page ... wherein, said layout is susceptible to influence by browser configuration on said one or more second computing systems.” A subsequent limitation of claim 1 provides

“determining ... a primary split direction for the web page, preserving a preferred layout of said web page when rendered by one or more second computing systems, wherein said preferred layout is susceptible to influence by browser configuration on said one or more second computing systems.” Remaining independent claims 10, 11 and 12 each contain a similar limitation.

Appellant respectfully reiterates its contention that the use of the phrase “susceptible to influence” does not render the independent claims indefinite. Appellant asserts that the use of the term “susceptible to influence,” particularly in the context it is presented in the claims where the “layout is susceptible to influence by browser configuration on said one or more second computing system” is not giving a meaning to the term repugnant to its usual meaning. The use of the phrase “wherein said preferred layout is susceptible to influence by browser configuration on” a computing system, or the like, serves to identify the layouts which are acted upon in the present claims. Therefore, the use of the phrase “susceptible to influence” in the context of this limitation clearly serves to define the claims in such a manner that the metes and bounds of claimed coverage is clear.

As noted in the Appeal Brief, the Final Office Action, in responding to Appellant’s earlier arguments on this point, on page 8 states “...it [the phrase “susceptible to influence”] means that said layout is ‘subject’ to influence” (bracketed clarification added). Therefore, Appellant asserts that since Appellee is able to parse a meaning from the claim language consistent with the common and ordinary meaning of the questioned phrase, the claim is not vague or indefinite. Thus, Appellant respectfully contends that the independent claims define their subject matter with a reasonable degree of particularity and distinctness as spelled out by M.P.E.P. §2173.02.

IV. The Rejection of Claims 1-5, 8 and 10-19 under 35 U.S.C. §103 (a)

Claims 1-5, 8 and 10-19 stand rejected under 35 U.S.C. §103(a) over *Templeman* in view of *Nielson*. As, a preliminary matter, in addressing Appellant’s arguments the Examiner’s Answer at point “k” states “Appellant’s arguments from page 17 (argument 1) to page 23 are substantially similar to those previously presented. Accordingly, the examiner’s above responses apply to these arguments as well.” Therefore, Appellant will address Appellee’s responses without reference to specific claims, where appropriate.

At point “b” in response to Appellant’s contention that *Templeman* as modified by *Nielsen* does not disclose at least “determining, using a first computing system, a primary split direction for the web page” and “determining splits of the web page, in the primary split direction,” the Examiner’s Answer states:

Templeman teaches merging of content into a set of display frames, said frames organized into metaforms for presenting said content in various preferred formats, intended to preserve the original content presentation style (i.e. newsletters, reports, business letters, etc.). Templeman analyzes the data stream and matches a (preferred) display format for said data.

Appellant wishes to respectfully reiterate its position that *Templeman*, at least at column 5, lines 30 through 52, only discloses a predefined metaform employing frames in the form of a dynamic template receiving specific defined items of information. Each of the frames are defined to receive either text or graphics data. Further, the metaforms of *Templeman* define or set column spacing while the present invention determines both a primary direction of splits on a web page and sets the splits themselves, in that primary direction. *Templeman* is silent as to splits in general and as to determining a primary direction of splits on a web page. Appellant wishes again to emphasize that any splits and their directions present in *Templeman* are predefined in the metaform.

Further at point “c” the Examiner’s Answer, in part, states

The claims do not preclude the examiner from using metaform predefinitions. In addition, Templeman has the capability of adapting data layout to different templates if an intended template is unavailable (Templeman column 11 lines 50-67). In addition, Templeman’s split number and direction has been determined (or pre-determined) by at least the designer of said template on a “first computing system” using *Templeman*’s invention.

Appellant wishes to point out that Column 11, lines 58-66 of *Templeman* provides:

To allow a system with a limited number of metaforms to accept a wide array of data, applications software 78 may include the ability to reflow incoming data to those frames which are available. For example, if the particular metaform for which a document was originally formatted is not available on the computer system 40 that receives it, applications software 78 may be equipped with an ability to substitute another metaform from those metaforms which are available in system 40.

Thus, *Templeman* fails to teach a “capability of adapting data layout to different templates” as alleged (for a first time) by the Examiner’s Answer. Regardless, such an ability would seem to be irrelevant to the determination of a split direction, and determining of splits in that direction, as *Templeman* only teaches the “reflow incoming data to those frames which are available.”

As to Appellee’s statement that “*Templeman*’s split number and direction has been determined (or pre-determined) by at least the designer of said template on a ‘first computing system’ using *Templeman*’s invention,” this would also seem to be irrelevant. As Appellee states the designer of the template determines the split direction, not the computing system as recited in the present independent claims.

At point “d” the Examiner’s Answer states:

Nielsen teaches a transformation that transforms a web page (preserving an aspect ratio), for display in an HTML processing application (i.e. a web browser) in output devices of differing sizes. Different size browsers have a bearing on display presentation. The examiner applies Nielsen’s resizing to *Templeman*’s web page display resizing and relationship constraints. It is respectfully submitted that Nielsen’s display and font size are definite aspects of web page layout that change with browser size, as taught by Nielsen.

However, Appellant wishes to reiterate that the disclosure of *Nielsen* seems to be limited to issues of display and font size, not all aspects of a web page layout that are susceptible to influence by browser configuration, such as browser default font sizes, which can be compensated for by the determination of splits as recited in the present independent claims.

As pointed out by the Examiner’s Answer at point “e,” Appellant has asked Appellee for a reference or affidavit to support his contention that “the newspaper designer can interpret these columns (and/or their vertical white space columns) as ‘primary splits.’” In reply, the Examiner’s Answer states:

Newspapers and newsletters with multiple columns of text have been in common use since at least the last century (see the Washington Post). The skilled artisan is cognizant of the observation that higher numbers of columns used in a newspaper generally equates to a greater amount of knowledge presented, therefore it is generally advantageous for a newspaper designer to use as many columns of text as practically and aesthetically possible within its

layout. Since newspaper columns are generally vertical, said columns typically separated by vertical areas of white space (“splits” for visually defining/separating each column), the newspaper designer can interpret these columns (and/or their vertical white space columns) as “primary splits” (in this case, primarily vertical splits between columns). It is respectfully submitted that claims can be rejected based upon general knowledge that the skilled artisan possesses at the time of the invention, in combination with various references, accordingly.

While Appellant would not argue that the use of columns in newspapers and other documents is well known, Appellant does take issue with Appellee’s assertion that “Since newspaper columns are generally vertical, said columns typically separated by vertical areas of white space (‘splits’ for visually defining/separating each column), the newspaper designer can interpret these columns (and/or their vertical white space columns) as ‘primary splits’ (in this case, primarily vertical splits between columns).” Nothing in the appearance of a newspaper would indicate that vertical splits are “primary splits” as defined in the present claims. In fact, stories in a newspaper are commonly separated by horizontal gutters, while text within a story is typically only separated by vertical gutters. Thus, it would seem that the splits between stories would be more fundamental than the splits between columns within a story. Furthermore, Appellee’s statement “The skilled artisan is cognizant of the observation that higher numbers of columns used in a newspaper generally equates to a greater amount of knowledge presented” is not understood by Appellant. It would seem that more “knowledge” would be presented by the use of fewer columns, gaining the space used for guttering to present additional text (knowledge). Therefore, Appellant respectfully contends that the Final Office Action and Examiner’s Answer fails to meet the duty imposed by 37 C.F.R. 1.104(d)2 and/or M.P.E.P. 2144.03 through Appellee’s failure to provide an Affidavit or reference. Thus the continued rejection of the independent claims is improper.

At point “f” the Examiner’s Answer appears to provide new motivation for combining *Templeman* and *Nielsen*, stating:

Templeman teaches relationship constraints which can override template parameters, so as to preserve the general layout type, even when different size elements are added and subtracted Nielsen teaches resizing web pages to fit various display devices. The examiner applies Nielsen to Templeman’s layout restructuring, allowing Templeman the desired benefit of overriding template parameters in order to adapt to the limitations of smaller (i.e. PDA) displays.

However, Appellant respectfully points out that the motivation stated by the Examiner's Answer is contrary to the teachings of *Templeman*, which at column 8, lines 62-65, column 9, lines 41-43, and Column 10, lines 61-63 teach that constraints can be overridden by other parameters, not that relationship constraints can override template parameters as recited in the Examiner's Answer. The overriding of constraints in *Templeman* is contrary to the contention that these constraints are analogous to the presently claimed primary split directions and to the stated motivational benefit of "overriding template parameters in order to adapt to the limitations of smaller (i.e. PDA) displays."

In addressing claim 3 at point "g" the Examiner's Answer states "Nielsen 'locks' the various fonts within the constraints of a determined transformation, so as to preserve the various ratio of font sizes as originally intended, when the altered web page is shown" (emphasis added). However, Appellant respectfully reiterates, *Nielsen* fails to disclose or suggest all the limitations of claim 3, which recites "enabling the size of selected text of the web page to be locked" (emphasis added). The Examiner's Answer admits that *Nielsen* teaches preserving font ratios, not locking text size.

Point "h" of the Examiner's Answer states: "Appellant's inclusion of Boolean OR, within claim 5 allows the examiner to choose either columns, or rows. In addition, *Templeman*'s Figure 3A (the space between item 86 and item 90) can be interpreted as showing a split in the horizontal direction." However, claim 5 recites "generating an internal representation of the web page where the layout of the web page is primarily by rows or primarily by columns in accordance with the splits." Appellant's search of the M.P.E.P. fails to provide support for Appellee's assertion that he is permitted to choose a limitation due to the mere inclusion of the word "or" in a claim. Furthermore, the alternative expression is applied to internal representation where the layout is primarily by rows or primarily by columns in accordance with the splits, not just a layout by rows or columns. In other words, the generation of the internal representation is dependent on the determined splits and may be primarily by rows in accordance with the determined splits, or may be primarily by columns in accordance with the determined splits. Finally, Appellee's citation of the space between items 86 and 90 in FIGURE 3A of *Templeman* showing a horizontal split only serves to emphasize *Templeman*'s failure to disclose the base limitation of determining a primarily split direction.

Claim 8 recites “wherein the generating [an internal representation of the web page] step is performed after receiving a publish request from a user” (bracketed clarification from base claim 5 added). In addressing Appellant’s Appeal Brief arguments concerning the rejection of claim 8, the Examiner’s Answer at point “i” states:

[T]he skilled artisan is cognizant that “publishing” a web page generally involves making said page available to users (i.e. web pages accessible via the Internet). A “publish request from a user” would have been obvious to one of ordinary skill in the art at the time of the invention, because entering a URL and pressing <ENTER> in a typical web browser (i.e. Netscape) is interpreted as a signal to a server to fetch (publish) a web page onto the screen of said browser. In addition, various buttons typically shown on a browser (i. e. Home/Reload buttons, as well as bookmark lists) substantially serve the same function as fetching and displaying published web pages.

Thus, the Examiner’s Answer seems to address accessing an already published web page, but has failed to address displaying the webpage as a part of publishing the webpage.

V. The Rejection of claim 9 under 35 U.S.C. §103(a)

At point “j” the Examiner’s Answer replies to Appellant’s motivation argument that *Lemay* teaches away from the present invention by stating: “The examiner uses *Lemay* to specifically teach an HTML writer utilizing a Test (preview) button (*Lemay* p. 348).” However, at this point in Appellant’s Brief, Appellant is not arguing the teaching of a preview button by *Lemay*, but rather that a combination of *Lemay* and *Templeman* is improper to address the present claim 9. As pointed out in Appellant’s Brief, *Lemay* clearly teaches away from such a combination by stating that features of the present claims are not present in the art.

VI. Conclusion

As discussed above in addressing Appellant’s arguments the Examiner’s Answer at point “k” states “Appellant’s arguments from page 17 (argument I) to page 23 are substantially similar to those previously presented. Accordingly, the examiner’s above responses apply to these arguments as well.” Therefore, Appellant respectfully requests that its replies to Appellee’s responses be read as addressing the corresponding claims accordingly.

For at least the reasons set forth in the Appeal Brief dated October 27, 2003, as supplemented above, Appellant respectfully contends that each of the pending claims distinguish over the prior art of record under 35 U.S.C. §103, and meet the requirements of 35 U.S.C. §112. Accordingly, Appellant submits that this application is in full condition for allowance and respectfully requests that the Board indicate allowability of claims 1 through 5 and 8 through 19 so that the present application may pass to issue.

Appellant believes no fee is due with this Reply Brief. The Fees for the accompanying Request for Oral Hearing are dealt with in the accompanying transmittal(s). However, if a fee is due, please charge our Deposit Account No. 06-2380, under Order No. 47583/P029US/10205730 from which the undersigned is authorized to draw.

Dated: March 29, 2004

Respectfully submitted,

By 

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